

No. 9/5/84-Lab/4142.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1977 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s The Shekhpura Gujran Co-operative Consumer Store & Sewa Society Ltd. (Mini Bank), Shekhpura, District Hissar).

BFFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 14 to 81

between

SHRI MANGE RAM, WORKMAN AND THE MANAGEMENT OF M/S THE SHEKHPURA GUJRAH CO-OPERATIVE CONSUMER STORE & SEWA SOCIETY LTD., (MINI BANK), SHEKHPURA (DISTRICT HISSAR)

Present:

Shri T. C. Gupta, A.R. for the workman.

Shri Anil Kumar Jain, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Mange Ram and the management of M/s. The Shekhpura Gujran Co-operative Consumer Store & Sewa Society Ltd. (Mini Bank), Shekhpura (District Hissar), to this Court, for adjudication,—vide Labour Department Gazette Notification No. ID/HSR/80-80/58844, dated 3rd December, 1980.

Whether the termination of services of Shri Mange Ram was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the workman is that he was working as a Salesman with the respondent since 1st March, 1977 on monthly wages of Rs. 250 and that he also made a deposit of Rs. 2,000 as security with the respondent but the respondent choose to unlawfully terminate his services on 18th September, 1980 without holding an enquiry, payment of retrenchment compensation or any prior notice as envisaged under section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). So, there is a prayer for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, it is admitted that the workman was employed as a Salesman on temporary basis with effect from 1st March, 1977 but it is alleged that as he was guilty of embezzlement and mis-management, he was removed from service on 18th September, 1980. It is further alleged that the workman was guilty of contumacious behaviour and he was given many opportunities to mend himself but he did not and as such, the workman was proving as a drag upon the society and so his dismissal was legal and justified. Additional plea projected was that since the controversy in dispute is not covered under the said Act. So, the reference to this Court is bad in law.

4. In the rejoinder filed by the workman, pleas taken by the management has been controverted, so, the parties entered upon the reference on the following issues on 8th September, 1982 :—

1. Whether the reference is bad in law as per para 1 of the additional plea ?

2. Whether the termination of services of Shri Mange Ram was justified and in order ? If not, to what relief is he entitled ?

5. The management examined MW-1 Shri Parkash Chand, MW-2 Shri Parbhu, MW-3 Shri Rakha Ram, MW-4 Shri Hari Singh and MW-5 Shri Jai Karan. The workman appeared as his own witness as WW-1.

6. The learned Authorised Representatives of the parties heard. Documents perused. My findings on the issues framed are as below :—

Issue No. 2:

7. Admittedly no chargesheet was issued to the workman regarding allegations of embezzlement levelled against him in the reply filed by the respondent. Some efforts were made by the respondent to prove that the workman was in the habit of embezzling amount of the society from the statement of MW-2 Shri Parbhu, MW-3 Shri Rakha Rao, MW-4 Shri Hari Singh and MW-5 Shri Jai Karan. MW-2 Shri Parbhu stated that the workman made a bogus entry regarding the purchase of fertilizer valuing Rs. 4,200 against him regarding which, he come to know a month's later on. A meeting of the society was convened. The matter was patched up when the workman agreed to deposit the amount. MW-3 Shri Rakha Ram stated that the workman took away his cheque book and he made a complaint to the society but the matter was patched up. Similarly MW-4 stated that there was some dispute regarding fertiliser and the controversy was carried to the Executive Committee of the society, where the same was got

patched up. MW-5 stated that Shri Ganga Ram and Parbhu approached him with a complaint that the workman has taken away their cheque books and made bogus entry regarding purchase of fertilizer in their names. Meeting of the Panchayat was called, where the workman admitted his fault and the matter was patched up.

8. From the evidence discussed above, the learned Authorised Representative of the respondent tried to argue that the workman is in the habit of making entries in to the pass books of the members of the society with the intention to embezzle amount wrongly debited in their names and so, the respondent society was justified in terminating his services. Be that if may be so, the respondent could not have terminated the services of the workman without holding a domestic enquiry into the allegations of embezzlement. It has been so held in 1984 SC. (L & S) 21 *Jai Bhagwan versus Management of Ambala Central Co-operative Bank Ltd and other and Jai Bhagwan versus State of Haryana and others*. In the case under reference some sort of enquiry was held by the management before terminating the services of the workman but in the present case, no enquiry was ever held against the workman. From the evidence now produced in the Court by the respondent, no charge of embezzlement stands proved against the workman. Under these circumstances, it is difficult to hold that the order of termination was legal and justified, because the workman was never asked to answer any charge and there was no enquiry against him and no notice was issued to him to show cause as to why his services should not be terminated and even in the order of termination, there is no mention of any reason. In this situation of the matter, the order of termination is wholly unsustainable and as such, the same is set aside and so, this issue is answered in favour of the workman.

Issue No.1. 9. This issue was not pressed on behalf of the respondent. Since the services of the workman terminated by the respondent, the workman was justified in raising an industrial dispute.

10. In the light of my foregoing discussion, the workman is ordered to be reinstated with continuity of service. As regards back wages, since the workman has been gainfully employed after 28th December, 1980, he shall not be entitled to back wages after that period. However, he shall be entitled to back wages from 18th September, 1980 to 27th December, 1980. The reference is answered and returned accordingly. There is no order as to cost.

Dated 10th May, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endorsement. No. 14/81/777 dated, 11th May, 1985.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1957.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

The 27th May, 1985

No. 9/5/84-6Lab/4045.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of M/s Haryana Roadways, Kaithal (Haryana).

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT, AMBALA
AT AMBALA CITY

Ref. No. 186 of 1984
(Old No. 152 of 1982)

SHRI CHANAN SINGH, WORKMAN AND THE MANAGEMENT OF MESSRS HARYANA ROADWAYS, KAITHAL (HARYANA)

resent.—

Shri U. Kant, for workman.

Shri A.R. Goyal, for respondent.

AWARD

The Hon'ble Governor of Haryana in exercise of the powers conferred vide clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, referred the following disputes to the Presiding Officer, Labour Court, Faridabad between Shri Chanan Singh, workman and the management of Messrs Haryana Roadways, Kaithal. The terms of the reference are as under:—

Whether the termination of services of Shri Chanan Singh, workman was justified and in order? If not to what relief is he entitled to?

Workman Chanan Singh alleged that he has been serving as a conductor in Haryana Roadways, Kaithal Depot, Kaithal. A fictitious complaint was lodged against him that he had a trip of Haridwar with Haryana Roadways Bus and did not issue tickets to the passengers and made embezzlement of that amount. Chargesheet was served upon him which was refuted by him. The inquiry was not conducted properly and fairly. He was not afforded an opportunity to cross-examine the witnesses and in lead defence evidence. So order of termination of services are unjustified and not tenable, so he has prayed for re-instatement with continuity in service with full back wages or any other relief which the court deems fit.

Respondents contested the case contended that this reference is liable to be cancelled on the square that the workman has approached the court without exhausting the departmental remedy available to him. It was also contended that applicant is not an workman and his dispute is not covered under the Industrial Disputes Act, 1947. It was further contended that he took bus beyond the prescribed route and committed unauthorised act. The passengers were taken without tickets price of the tickets were charged from them which was embezzled by the workman Shri Chanan Singh. So his termination is justified and not entitled to any relief claimed for.

On the pleadings of the parties the following issues have been framed :—

Issues :

Whether the termination of services of Shri Chanan Singh workman was justified and in order? if not to what relief is he entitled to?

I have gone through the evidence placed on the file as well as the inquiry records placed on the file and have given patient hearing to authorised representatives of both the parties at length. My issue wise findings are as under.

Issue No. 1

Onus of this issue was in fact upon the management, it was bound to establish that termination order regarding the services of Shri Chanan Singh is justified. To prove it management has examined Shri Satya Parkash, as MW-2 who brought Inquiry file and stated that on receipt of report of Shri Ghansham Dass Inspector Ex. M-2 a letter was written to the Chairman, Municipal Committee, Haridwar which is Ex. M-10. Its reply Ex. M-11 was received according to that it was found that workman had taken the bus to Haridwar in an un-authorised manner and charged price of the tickets from the passengers who boarded it without issuing the tickets and thus made embezzlement. Charge-sheet was served upon him. Traffic Manager was appointed an Inquiry Officer who conducted the enquiry. Inquiry report was against the workman. Show cause notice was also issued to him alongwith inquiry report who was given an opportunity to file reply of the same which he did his reply Ex-MW-13. An opportunity of personal hearing was also afforded by letter Ex. M-14 and thereafter services of workman were dispensed with,—*vide* order Ex. M-15.

Management also examined Inquiry Officer Shri N. S. Phogat, Traffic Manager, he also supported the case of the management. He proved his inquiry report Ex. M-7. In cross-examination he deposed that his inquiry report is based on reply of Chairman, Nagar Palika, Haridwar and statement of Shri Ghansham Dass, Inspector. He denied the suggestion that enquiry proceedings and report are tented. He also denied the suggestion that a proper opportunity of cross-examination, and leading of defence evidence and personal hearing were denied to workman. He stated that in this act Conductor and Driver both were guilty. He can't say whether any action was taken against the driver or not.

Shri Chanan Singh appeared as AW-I and he refuted the charges against him and stated that he was not given an opportunity of cross-examining the witnesses. He was also deprived of leading defence evidence. In cross-examination he denied his knowledge of having received charge-sheet, inspection report etc.

In view of the above oral evidence and toll tax receipt Mark-A of bus No. HRQ-2277 coupled with the statement of Shri Ghansham Dass, Inspector it is crystal clear that workman Chanan Singh drove Bus No. HRL-5723 at 8.30 and took 80 passengers. Toll Tax receipt No. 65/157, dated 10th July, 1977 was issued but Shri Chanan Singh did not issue any tickets to any passengers and thus embezzled Rs. 124.80.

I have minutely perused the Inquiry file and other evidence available on the file that he entirely goes against Shri Chanan Singh. Indent Ex-M-11 received from Municipal Committee, Haridwar also corroborated the facts that accused took Bus No. 5723-HRL from Rishi Kesh to Haridwar and paid toll tax of 80 passengers and did not issue any tickets to any passengers while charged full fare from them.

The authorised representative of workman solely urged that the enquiry was not properly conducted but failed to assail the enquiry proceedings as well as the inquiry report and could not falsify the toll tax records of Haridwar Municipal Committee.

After affording thoughtful consideration to the whole matter I am of the considered view that the charges levelled against workman have proved against the workman Chanan Singh, workman has made embezzlement of

Rs. 124.80 which resulted into termination of his services accordingly. The order of termination passed by management is justified and in order. This issue is decided in favour of management and against the workman Shri Chanan Singh.

Regarding the controversy between the parties I pass my award accordingly.

Dated the 27th March, 1985

V. P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.

Endorsement. No. 448, dated 7th May, 1985.

Forwarded (four Copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.

No. 9/5/84-6Lab/4166.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of M/s. Haryana Roadways, Kaithal (Haryana).

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT,
AMBALA AT AMBALA CITY

Reference No. 180, 181 and 182 of 1984
Old No. 252, 253 and 254 of 1982

SARVSHRI RAGHBIR SINGH, RAJPAL AND RATTAN LAL, WORKMEN OF THE HARYANA
ROADWAYS, KAITHAL (HARYANA).

Present.—

Shri Rajeshwar Nath, for the workmen.
Shri A. R. Goyal, for the respondent.

AWARD

The Hon'ble Governor of Haryana in exercise of the powers conferred,—*vide* clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following disputes to the Presiding Officer, Labour Court, Faridabad between Sarvshri Raghbir Singh, Rajpal and Rattan Lal, workmen of the Haryana Roadways, Kaithal. The terms of the references are as under :—

Whether the termination of services of Sarvshri Raghbir Singh, Raj Pal and Rattan Lal, workmen were justified and in order? If not, to what relief are they entitled to ?

This reference of Raghbir Singh, Raj Pal and Rattan Lal were originally made by the Governor of Haryana to Labour Court, Faridabad for adjudication. On creation of new Labour Court at Ambala these references were received by transfer.

All the three workmen alleged that they were employed by the General Manager, Haryana Roadways, Kaithal on daily wages. First time on 20th May, 1978 for one month and thereafter every month. Fresh orders of appointment were received by all the three workmen. They remained in service up to 27th April, 1982 thereafter their services were terminated without any notice, without making any payment of wages of notice period and retrenchment compensation. In spite of the fact that vacancies existed, certain juniors to them were retained in service and new persons in their places were recruited. So all the three workmen have prayed that the orders of termination of their services by the General Manager, Haryana Roadways, Kaithal are in violation of section 25-F of Industrial Disputes Act, 1947.

Respondent has contested the case and has contended that all the three workmen were employed as Sweepers on temporary basis (on daily wages). The services of workmen never made regular, it was also contended that workman did not work continuously for years, so there was no necessity to comply with the provisions of section 25 (F) of the Industrial Disputes Act, 1947 and the order of respondent is justified.

On the pleadings of the parties the following issues were framed :—

Issue No. 1—

“Whether the termination of services of Sarvshri Raghbir Singh, Raj Pal and Rattan Lal was justified and in order ? If not, to what relief are they entitled to ?” OPM

I have heard Shri Rajeshwar Nath for all the three workmen and Shri A.R. Goyal, Law Officer for respondent and have persued oral and documentary evidence placed on the file. My issue-wise findings are as under :—

In support of this issue management examined Shri Prem Dutt Joshi, Clerk, Haryana Roadways, Kaithal Depot, Kaithal. He deposed that Raghbir Singh, Rajpal and Rattan Lal were 1st of all employed on 20th May, 1978 then on 13th June, 1979, 8th September, 1980 and so on they remained in service upto 27th April, 1982. Their recruitment was direct and not through employment exchange. He further deposed that after termination of their services other persons were recruited against their post through employment exchange illegally. He stated that he can't say whether certain junior persons to applicants had been working on the day on which their services were terminated. He further stated that no notice, no retrenchment compensation was given to the workmen. Ruldu Ram and Raj Kumar are still in service.

On the other hand S/Shri Raghbir Singh, Rajpal and Rattan Lal appeared in the witness box. They deposed that they were illegally terminated on 27th April, 1982 without any notice and without making any payment of retrenchment compensation. S/Shri Joginder, Mohinder Pal and Jogi Ram who were junior to them were retained in service and 3 other fresh persons were employed in place of applicants. The seniority list Ex-M1 reads that name of Rattan Lal figures at Sr. No. 23 Name of Raghbir Singh, figures at S. No. 39 while name of Rajpal, does not figure anywhere because complete list of official S. No. 1 to 130 has not been produced. This list is of 80 employees.

Statement of MW-I Shri Prem Dutt Josh, is in favour of all the three workmen who stated that applicants were illegally terminated while certain juniors to them were retained in service. He also admitted that in place of all the above three workmen some other persons namely Mohinder Pal and Jogi Ram were recruited.

In view of the above evidence it is evident that all the three workmen Shri Raghbir Singh, Raj Pal and Rattan Lal served the management more than 240 days with breaks in their services which is meaningless in view of judicial pronouncement Shri Mohan Lal Vs. Management of M/s Bharat Electronics Ltd. 1981 (SLR) Vol. II, page 11 in which it was observed that a worker shall be said to be in continuous service for a period if he is from that period is in un-interrupted service, if interruption is caused on account of sickness, strike by way of look-out or a cession which is not due to any fault of the part of workman.

So in the case in hand if any break was caused in the service of workman due to cession of work in these circumstances it has to held that it was not due to the fault of the workman but because of un-available circumstances which were not in control of the workman by any means.

It has been clearly admitted by Shri Prem Dutt Joshi, official of management that at the time of termination of services of present workmen no notice was issued to them, no wages in lieu of notice period were paid, no retrenchment compensation was paid and fourthly no intimation regarding their termination of services of the workman was furnished to the appropriate authority.

Moreover the services lapse on the part of the managements is that certain juniors to the present workman namely Ruldu Ram, Raj Kumar, Jogi Ram and Mohinder Pal, had been working. It is also clear from the evidence of the management itself that vacancies existed, their was no question of cession of work. After terminating the services of the above 3 workmen fresh recruitment were made in their places. So termination order regarding the services of Shri Raghbir Singh, Rajpal and Rattan Lal, are in contravention of Section 25(F) of the Industrial Disputes Act, 1947. Hence illegal and un-justified. So this issue is decided against the management and in favour of all the three workmen.

Relief.—From the foregoing reasons on the basis of my findings on issue No. 1, I ordered the reinstatement of all the three workmen from the day of termination of their services i.e. 27th April, 1982 with continuity in service and with full back wages as well as all other benefit which they would have been entitled to while in service. I pass my award regarding all the three controversy in hand accordingly.

Dated the 20th March, 1985.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endst. No. 893, dated 9th April, 1985

Forwarded (Four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.